

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1039 Transportation Network Companies
SPONSOR(S): Transportation & Infrastructure Subcommittee, Rommel
TIED BILLS: **IDEN./SIM. BILLS:** SB 1352

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Roth	Vickers
2) Insurance & Banking Subcommittee			
3) State Affairs Committee			

SUMMARY ANALYSIS

A transportation network company (TNC) is an entity that uses a digital network to connect a rider to a TNC driver, who provides prearranged rides. With certain exceptions, a “for-hire vehicle” means any motor vehicle used for transporting persons or goods for compensation, or let or rented to another for consideration. There are different regulatory and insurance requirements in place for TNCs and for-hire vehicles.

The bill defines “luxury ground transportation network company” to mean a company that uses its digital network to connect riders exclusively to drivers who operate for-hire vehicles, including limousines and luxury sedans. The bill requires luxury ground TNCs to comply with all of the requirements applicable to a TNC, and requires maintenance of specific insurance coverage at all times.

The bill defines “transportation network company digital advertising device” to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only while the TNC vehicle is turned on. The bill provides additional requirements for the use and display of a TNC digital advertising device.

The bill provides that a luxury ground TNC is not considered a for-hire vehicle and that the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles is preempted to the state.

The bill may have a fiscal impact on the Department of Financial Services. To the extent that local governments currently collect revenue from regulation of digital advertising on vehicles, or fees from regulation of limousines and luxury sedans, that revenue will be negatively impacted. See Fiscal Analysis section for details.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Transportation Network Companies

In 2017, the Legislature established a regulatory framework for transportation network companies (TNCs).¹ The law defines a “TNC” as an entity operating in this state that uses a digital network to connect a rider² to a TNC driver, who provides prearranged rides. A TNC is not deemed to own, control, operate, direct, or manage the TNC vehicles or TNC drivers that connect to its digital network, except where agreed to by written contract, and is not a taxicab association or for-hire vehicle owner. The term does not include entities arranging nonemergency medical transportation for individuals who qualify for Medicaid or Medicare pursuant to a contract with the state or a managed care organization.

A “TNC vehicle” is defined as a vehicle that is used by a TNC driver to offer or provide a prearranged ride and that is owned, leased, or otherwise authorized to be used by the TNC driver. A vehicle that is let or rented to another for consideration may be used as a TNC vehicle. The law specifies that a taxicab, jitney, limousine, or for-hire vehicle is not a TNC vehicle.

A “prearranged ride” is defined as the provision of transportation by a TNC driver to a rider, beginning when a TNC driver accepts a ride requested by a rider through a digital network³ controlled by a TNC, continuing while the TNC driver transports the requesting rider, and ending when the last requesting rider departs from the TNC vehicle. The term does not include a taxicab, for-hire vehicle, or street hail⁴ service and does not include ridesharing,⁵ carpool,⁶ or any other type of service in which the driver receives a fee that does not exceed the driver's cost to provide the ride.

A “TNC driver” is defined as an individual who receives connections to potential riders and related services from a TNC and in return for compensation, uses a TNC vehicle to offer or provide a prearranged ride to a rider upon connection through a digital network. The law specifies that a TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. The law provides that a TNC driver is not required to register a TNC vehicle as a commercial motor vehicle or a for-hire vehicle. It requires the TNC's digital network to display the TNC driver's photograph and the TNC vehicle's license plate number before the rider enters the TNC vehicle.

If a fare is collected from a rider, the law requires the TNC to disclose the fare or fare calculation method on its website or within the online-enabled technology application service before beginning the prearranged ride. If the fare is not disclosed, the rider must have the option to receive an estimated fare before beginning the prearranged ride. In addition, a TNC is required to transmit to the rider an

¹ Section 627.748, F.S.

² “Rider” means an individual who uses a digital network to connect with a TNC driver in order to obtain a prearranged ride in the TNC driver's TNC vehicle between points chosen by the rider.

³ The term “digital network” means any online-enabled technology application service, website, or system offered or used by a TNC that enables the prearrangement of riders with TNC drivers.

⁴ The term “street hail” means an immediate arrangement on a street with a driver by a person using any method other than a digital network to seek immediate transportation.

⁵ Section 341.031(9)(a), F.S., defines “ridesharing” as an “arrangement between persons with a common destination, or destinations, within the same proximity, to share the use of a motor vehicle on a recurring basis for round-trip transportation to and from their place of employment or other common destination. For purposes of ridesharing, employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall be deemed to terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer. However, an employee shall be deemed to be within the course of employment when the employee is engaged in the performance of duties assigned or directed by the employer, or acting in the furtherance of the business of the employer, irrespective of location.”

⁶ Section 450.28(3), F.S., defines “carpool” as “an arrangement made by the workers using one worker's own vehicle for transportation to and from work and for which the driver or owner of the vehicle is not paid by any third person other than the members of the carpool.”

electronic receipt within a reasonable period of time after the completion of a ride. The receipt must list the origin and destination of the ride, total time and distance of the ride, and total fare paid.

A TNC is required to designate and maintain an agent for service of process in this state.⁷

A TNC or TNC driver is not a common carrier, contract carrier, or motor carrier and does not provide taxicab or for-hire vehicle service. As a result, a TNC driver is not required to register the TNC vehicle as a commercial motor vehicle or a for-hire vehicle.⁸

While a TNC driver is logged on to the digital network but is not engaged in a prearranged ride, the TNC or TNC driver must have automobile insurance that provides:⁹

- Primary automobile liability coverage of at least \$50,000 for death and bodily injury per person, \$100,000 for death and bodily injury per incident, and \$25,000 for property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required under the Florida Motor Vehicle No-Fault Law.¹⁰

When a TNC driver is engaged in a prearranged ride, the automobile insurance must provide:¹¹

- Primary automobile liability coverage of at least \$1 million for death, bodily injury, and property damage; and
- Personal injury protection benefits that meet the minimum coverage amounts required of a limousine under the Florida Motor Vehicle No-Fault Law.

The coverage requirements may be satisfied by automobile insurance maintained by the TNC driver, an automobile insurance policy maintained by the TNC, or a combination of automobile insurance policies maintained by the TNC driver and the TNC.¹²

The law preempts to the state the regulation of TNCs and specifies that a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision may not:

- Impose a tax on or require a license for a TNC, TNC driver, or TNC vehicle if such tax or license relates to providing prearranged rides;
- Subject a TNC, TNC driver, or TNC vehicle to any rate, entry, operation, or other requirement of the county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision; or
- Require a TNC or TNC driver to obtain a business license or any other type of similar authorization to operate within the local governmental entity's jurisdiction.¹³

However, an airport or seaport is not prohibited from charging reasonable pickup fees consistent with any pickup fees charged to taxicab companies at that airport or seaport for their use of the airport's or seaport's facilities or from designating locations for staging, pickup, and other similar operations at the airport or seaport.¹⁴

For-Hire Vehicles

With certain exceptions, offering for lease or rent any motor vehicle in the State of Florida qualifies the vehicle as a "for-hire vehicle." A "for-hire vehicle" is a motor vehicle used for transporting persons or goods for compensation. When goods or passengers are transported for compensation in a motor vehicle outside a municipal corporation of this state, or when goods are transported in a motor vehicle not owned by the person owning the goods, such transportation is considered "for hire". The carriage of

⁷ Section 48.091, F.S., requires any corporation doing business in the state to have a registered agent and registered office in the state.

⁸ Section 627.748(2), F.S.

⁹ Section 627.748(7)(b), F.S.

¹⁰ Sections 627.730-627.7405, F.S. The amount of insurance required is \$10,000 for emergency medical disability, \$2,500 non-emergency medical, and \$5,000 for death.

¹¹ Section 627.748(7)(c), F.S.

¹² Section 627.748(7)(b) & (c), F.S.

¹³ Section 627.748(15)(a), F.S.

¹⁴ Section 627.748(15)(b), F.S.

goods and other personal property in a motor vehicle by a corporation or association for its stockholders, shareholders, and members, cooperative or otherwise, is transportation “for hire”.¹⁵

Florida law provides specific financial responsibility requirements to for-hire vehicles. For-hire vehicles, such as taxis and limousines must maintain a motor vehicle liability policy with minimum limits of \$125,000 per person for bodily injury, \$250,000 per incident for bodily injury, and \$50,000 for property damage.¹⁶ The owner or operator of a for-hire vehicle may also prove financial responsibility by providing satisfactory evidence of holding a motor vehicle liability policy issued by an insurance carrier, which is a member of the Florida Insurance Guaranty Association, or by providing a certificate of self-insurance.¹⁷

For counties, to the extent not inconsistent with general or special law, the legislative and governing body of a county has the power to carry on county government, including, but not restricted to, the power to license and regulate taxis, jitneys, and limousines for hire, rental cars, and other passenger vehicles for hire that operate in the unincorporated areas of the county.¹⁸

Digital Advertising Device

Certain companies allow taxi and TNC drivers to generate revenue through digital advertising via a digital smart screen on top of the taxi or TNC vehicle. The digital screen allows advertisers to run targeted, geofenced campaigns.¹⁹ There are currently digital advertising screens in use on vehicles in New York, Los Angeles, San Francisco, Chicago, and Dallas.²⁰

Digital advertising screens are installed on the roofs of motor vehicles owned or operated by individuals who commit to drive a minimum number of hours per week in certain urban markets. Drivers with digital advertising screens report earning an average of \$300 a month, depending on how many hours are driven.²¹

Prohibition Against Certain Lights

A person may not drive any vehicle or equipment upon any highway in this state with any lamp or device thereon showing or displaying a red, red and white, or blue light visible from directly in front of the vehicle, except for certain exceptions, such as fire department vehicles and road maintenance equipment.²² The law expressly prohibits any vehicle or equipment, except police vehicles, from showing or displaying blue lights, except for Department of Corrections vehicles or county correctional agency vehicles when responding to emergencies. Flashing lights are prohibited on vehicles except:

- As a means of indicating a right or left turn, to change lanes, or to indicate that the vehicle is lawfully stopped or disabled upon the highway;
- When a motorist intermittently flashes his or her vehicle’s headlamps at an oncoming vehicle notwithstanding the motorist’s intent for doing so; and
- Flashing lamps authorized for bicycle riders and deceleration lighting systems on buses.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA) became law in 1973.²³ The purpose²⁴ of FDUTPA is to:

¹⁵ Section 320.01(15)(a), F.S.

¹⁶ Section 324.032(1), F.S.

¹⁷ Section 324.031, F.S.

¹⁸ Section 125.01(1)(n), F.S.

¹⁹ Anthony Ha, *Rideshare Advertising Startup Firefly Launches with \$21.5M in Funding*, Techcrunch.com (December 6, 2018), available at <https://techcrunch.com/2018/12/06/firefly-launch/> (last visited January 22, 2020).

²⁰ See Firefly.com, available at <https://fireflyon.com/> (last visited January 22, 2020).

²¹ Sarah Holder, *Car-Mounted Ads Take a New Direction: Data Collection*, Citylab.com (November 20, 2019), available at <https://www.citylab.com/transportation/2019/11/firefly-digital-advertising-driver-pay-uber-lyft-cars-data/602077/> (last visited January 22, 2020).

²² Section 316.2397, F.S.

²³ Chapter 73-124, Laws of Fla.; codified at part II of ch. 501, F.S.

²⁴ Section 501.202, F.S.

- 1) Simplify, clarify, and modernize the law governing consumer protection, unfair methods of competition, and unconscionable, deceptive, and unfair trade practices.
- 2) Protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.
- 3) Make state consumer protection and enforcement consistent with established policies of federal law relating to consumer protection.

FDUTPA prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.”²⁵ The term “trade or commerce” is defined as “advertising, soliciting, providing, offering, or distributing, whether by sale, rental, or otherwise, of any good or service, or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated”, and the term includes “the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity.”²⁶

Effect of Proposed Changes

The bill defines a “luxury ground transportation network company” or “luxury ground TNC”, to mean a company that uses a digital network to connect riders exclusively to drivers who operate for-hire vehicles as defined in s. 320.01(15), F.S., including limousines and luxury sedans and excluding taxicabs. The entity may elect, upon written notification to the Department of Financial Services (DFS), to be regulated as a luxury ground TNC. A luxury ground TNC must comply with all of the requirements of s. 627.748 that are applicable to a TNC, including the preemption requirements, but is not required to comply with any requirements that prohibit the company from connecting riders to drivers who operate for-hire vehicles. At all times a luxury ground TNC must maintain insurance coverage at the levels at least equal to the greater of those required in s. 627.748, F.S., and those required of for-hire vehicles, regardless of whether the driver is operating as a for-hire vehicle driver or luxury ground TNC driver. However, a prospective luxury ground TNC that satisfies minimum financial responsibility requirements at the time of written notification to DFS by using self-insurance may continue to use self-insurance to satisfy the insurance requirements for a luxury ground TNC.

The bill authorizes TNC vehicle owners, rather than just TNC drivers, to maintain insurance that satisfies the insurance requirements required for TNCs. This allows the owner of a luxury ground TNC, who is not necessarily the driver, to maintain insurance on the vehicles.

A luxury ground TNC is not considered a for-hire vehicle for purposes of ch. 627, F.S. In order for the bill’s definition of “luxury ground transportation network company” to be compatible with current law, the bill makes conforming changes to the definitions of “prearranged ride”, “transportation network company”, and “transportation network company vehicle”, by removing references to “for-hire vehicle”, “for-hire vehicle owner”, and “limousine”. Additionally, the reference to “for-hire vehicle” is removed from the provision of law that states that a TNC or TNC driver is not considered a common carrier and does not have to register a TNC vehicle as a commercial motor vehicle or vehicle for-hire.

Lastly, the bill preempts to the state the regulation of luxury ground TNCs, luxury ground TNC drivers, and luxury ground TNC vehicles.

The bill also defines a “transportation network company digital advertising device” or “TNC digital advertising device” to mean a device no larger than 20 inches tall and 54 inches long that is fixed to the roof of a TNC vehicle and that displays advertisements on a digital screen only while the TNC vehicle is turned on.

The bill provides the following requirements for a TNC digital advertising device:

- A TNC driver may contract with an individual or company to install a TNC digital advertising device on a TNC vehicle.

²⁵ Section 501.204(1), F.S.

²⁶ Section 501.203(8), F.S.

- A TNC digital advertising device may be enabled with wireless Internet access and equipped with GPS.
- A TNC digital advertising device may display advertisements only when the TNC vehicle is turned on.
- A TNC digital advertising device must follow the lighting requirements of s. 316.2397, F.S.
- No portion of the TNC digital advertising device may extend beyond the front or rear windshield of the vehicle, nor may it impact the TNC driver's vision.
- A TNC digital advertising device must display advertisements only on the sides of the device and not to the front or rear of the vehicle. Identification of the provider does not constitute advertising.
- A TNC digital advertising device must, at a minimum, meet the requirements of the MIL-STD-810G standard,²⁷ or other reasonable environmental and safety industry standard, as determined through independent safety and durability testing under the review of a licensed professional engineer, before being installed on a TNC vehicle.
- A TNC digital advertising device may not display advertisements for illegal products or services or advertisements that include nudity or violent images. All advertisements displayed on a TNC digital advertising device are subject to the FDUTPA.
- A TNC driver is immune from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA unless the TNC driver is the advertiser.
- The owner or operator of a TNC digital advertising device that displays an advertisement that is in violation of s. 627.748, F.S., or the FDUTPA is immune from liability under s. 627.748, F.S., and the FDUTPA for the violation if the advertisement was displayed in good faith and without actual knowledge of the violation, unless the advertiser is the same person as the owner or operator.
- For the purposes of chapter 627, F.S., a TNC advertising device shall be deemed part of a TNC vehicle.

As a result of the inclusion of a TNC digital advertising device as part of a TNC vehicle, the regulation of a TNC digital advertising device is preempted to the state.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.748, F.S., relating to transportation network companies.

Section 2: Provides that the act will take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will likely have no impact on state government revenues.

2. Expenditures:

The bill may have a fiscal impact on DFS, but the impact is unknown at this time.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill preempts to the state the regulation of luxury ground TNCs and TNC digital advertising devices. To the extent municipalities, counties, and other governmental entities are imposing fees

²⁷ MIL-STD-810G is a U.S. military specification that guarantees a level of durability for a piece of technology. Specifically, it means the equipment has gone through a series of 29 tests, including shock tests, vibration tests, and more.

on luxury ground TNCs and TNC digital advertising devices, they will experience an indeterminate fiscal impact.

2. Expenditures:

The bill will likely have no impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes the use of TNC digital advertising devices thus enabling TNC drivers to install the devices and earn additional monthly revenue.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, s. 18 of the Florida Constitution may apply because this bill reduces the ability of a county or municipality to raise revenue; however, an exception may apply since the bill is expected to have an insignificant fiscal impact.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not provide a grant of rulemaking authority, nor does it require rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 28, 2020, the Transportation & Infrastructure Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Authorized TNC vehicle owners, rather than just TNC drivers, to maintain insurance that satisfies the insurance requirements required for TNCs.
- Specified that a TNC digital advertising device may be enabled with cellular or WiFi-enabled data transmission and equipped with GPS.
- Required that a TNC digital advertising device may only display advertisements when the vehicle is turned on.
- Removed the requirement that a TNC digital advertising device must allocate 10 percent of all advertisement inventory for government, not-for-profit, or charitable organizations at no cost.
- Provided that TNC digital advertising devices are subject to the FDUTPA.
- Provided the TNC driver protection from liability for the display of an advertisement that violates s. 627.748, F.S., or the FDUTPA, unless the driver is the advertiser.
- Provided the owner or operator of a TNC digital advertising device immunity from liability when a displayed advertisement is in violation of s. 627.748, F.S., or the FDUTPA, if the advertisement was displayed in good faith and without knowledge, unless the owner or operator is the advertiser.

This analysis is written to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

